

Verses 7 - 10

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ
 مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۖ نَصِيبًا
 مَّفْرُوضًا ﴿٧﴾ وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ
 وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ﴿٨﴾
 وَلِيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا خَافُوا عَلَيْهِمْ
 فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا ﴿٩﴾ إِنَّ الَّذِينَ يَأْكُلُونَ
 أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ
 سَعِيرًا ﴿١٠﴾

For men there is a share in what the parents and the nearest of kin have left. And for women there is a share in what the parents and the nearest of kin have left, be it small or large - a determined share. [7]

And if the kins and the orphans and the needy are present at the time of distribution, give them some of it

and speak to them in fair words. [8]

And those people should be fearful who, if they leave behind some helpless children, would remain anxious for them. So, they should fear Allah and say what is right. [9]

Surely, those who eat up the property of the orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell. [10]

Right from the opening of Sūrah Al-Nisā', the theme of universal human rights, particularly those relating to family life, has been appearing regularly. Verses before those dealt with the rights of orphans. The four verses here also take up particular rights of women and orphans which relate to inheritance.

The first verse (7) refutes the custom of *Jāhiliyyah* under which women were just not allowed to inherit. The verse declares their entitlement to their share as fixed by Islamic law and strictly forbids any attempt to decrease their due right. Since the subject concerned those who had a determined share in inheritance, and it is not uncommon that when such distribution is being made, some persons from among the poor and the orphans do make their appearance on the occasion, therefore the second verse (8) lays down the rule that they should be treated benignly. But, this command is not obligatory; it is, rather, commendatory.

The third and fourth verses (9, 10) also emphasize the importance of injunctions relating to orphans.

Commentary

The right to inherit from parents and other nearest of kin

Before Islam, orphans and women, the weaker links in the human chain, had been victims of all sorts of injustice. To begin with, none of their rights were recognized as such. Even if one of these was conceded, who could wrest it from men and hope to hold it safe? Such power and authority did not exist.

The breakthrough came when Islam championed their cause, legalized their rights and instituted safeguards to see that these stay secure against infringements. All this happened in the background when nations around the world had allowed these two weaker units of

human society to remain deprived of their natural and obligatory rights. Such was the state of the law of inheritance. The pre-Islam Arabs seemed to have lived by the very principle that the one deserving of inheritance is the one who rides a horse, fights against enemies and collects battle spoils. (Ruḥ al-Ma'ānī, v. 4, p. 21). As quite obvious, women and children could not live by this principle. So, according to their principle of inheritance, only a young and adult boy could become the inheritor. A girl was absolutely out of consideration for this purpose, irrespective of whether she was major or minor. And a boy too, if minor and immature, would not be deserving of inheritance.

There was an incident during the blessed time of the Holy Prophet صلى الله عليه وسلم when a Companion, Sayyidnā Aws ibn Thābit رضي الله عنه died. He left behind two daughters, a minor boy and his wife as the inheritors. But, very much like the old Arab custom, two of his cousins from the father's side came and took the whole property in their possession and just gave nothing to anyone from among the children and wife of their deceased brother. This may have been so because, according to their customary practice, a woman was absolutely out of the pale of inheritors, major or minor. This conveniently ruled out the wife and the two daughters. As far as the boy was concerned, he was a minor and, therefore, he too was excluded from inheriting anything. As a result, the two paternal cousins became the inheritors of the whole property.

In spite of what happened, the widow of Sayyidnā Aws ibn Thābit رضي الله عنه still wanted that these cousins who had taken possession of the entire property left by her deceased husband might as well marry the two orphaned daughters so that she is relieved of the concern for their marriage. But, as they did not accept this proposal too, she went to the Holy Prophet صلى الله عليه وسلم and narrated to him her sad story and explained the destitution of her children. Since, by that time, the 'verse of inheritance' was yet to be revealed in the Holy Qur'an, the noble Prophet صلى الله عليه وسلم withheld his response. His heart was at peace; he was confident that this unjust practice will be removed through Divine revelation. Thereupon, the following verse was revealed:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ
وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

For men there is a share in what the parents and the nearest of kin have left. And for women there is a share in what the parents and the nearest of kin have left, be it small or large - a determined share.

After that came the second verse of inheritance which contains the details of shares. The second section of this Sūrah comprises these details. So, the Holy Prophet صلى الله عليه وسلم followed the injunctions of the Qur'an, gave the wife the one-eighth of the total inheritance and distributed the rest of the property over the son and the daughters of the deceased in a way that the half of it went to the boy and the remaining half was shared equally by the two girls; and the cousins, since they were not the nearest of kin as compared to children, were excluded. (Ruh al-Ma'ānī)

The rule of inheritance

This verse lays down the rule relating to the law of inheritance as a corollary to some of its injunctions, which is: (... in what the parents and the nearest of kin have left.) The two words, '*al-wālidān*' (the parents) and '*al-aqrabūn*' (the nearest of kin) spell out two basic principles of inheritance. The first one is the bond of birth which exists between children and their father and mother and which has been described through '*al-wālidān*.' The second one is the general kinship which is the sense of the word, '*al-aqrabūn*'. According to the correct interpretation, the word, '*al-aqrabūn*' covers all kinds of family relationships. This may be the mutual bond of birth as in children and their parents; or, it may be of the other kind as in general family relationships; or, these may be relations established through marital connection. The word, '*al-aqrabūn*' covers all, but parents were set apart specially because of their importance. Then, this word has also established another principle of inheritance, that is, the mere fact of kinship is not enough for a claim on inheritance. Rather, it is necessary that the heir is nearest in kinship, for - if the degree of nearness or closeness were not made the standard condition - the inheritance of every deceased person would have to be, of necessity, distributed over the entire human population of this wide world. The reason is simple

to understand because everyone is the offspring of one father and mother, Adam and Eve, peace be on them. Be it close or not so close, there does exist some sort of mutual relationship in everyone. When it comes to distribution of inheritance, it is, to begin with, beyond the realm of possibility. However, speaking academically, if such an arrangement was somehow made, the resulting distribution of property would be something like one insignificant particle for each which will be no good for anyone. So, it was necessary that, given the pivotal position of kinship in the matter of inheritance, the principle should be: If choice has to be made from a collection of different relatives, then, the nearest of kin should be preferred over the farther ones and, in the presence of the nearest, the farthest should not be given a share. However, if there are relatives who are all declared to be the nearest at the same time, even if the nature of nearness in them be different, then, all of them will deserve a share in the inheritance as the father and mother alongwith children, or wife etc., for they all are the nearest, though the nature of nearness differs.

In addition to that, this very word, '*al-aqrabūn*' establishes that the way men are sharers in inheritance, so are women and children, who too cannot be deprived of this right, for kinship of children, parents or any others, is the same in a boy and girl as far as the fact of being related is concerned. A boy is born to his parents and so is a girl, who is born to them. When the right to inherit depends on being related, there is no sense in depriving a small child or a girl.

Another point about the style of the Holy Qur'an is worth noticing here. Instead of mentioning the entitlement of women in a separate sentence, the Holy Qur'an could have easily merged it with the entitlement of men in a single sentence, by saying, "For men and women both there is a share...." But the Holy Qur'an has elected to mention the entitlement of both sexes in two separate independent sentences, even though it seems to be a repetition. This is to emphasize the fact that the right of women in inheritance is quite independent and is as important as the right of men.

Furthermore, this very word, '*al-aqrabūn*' also tells us that the distribution of property left behind is not based on the criterion of need; it is, rather, based on the criterion of nearness in kinship. There-

fore, it is not necessary that the one more needy among the relatives should be the one more deserving of a share in inheritance. On the contrary, the one nearest in kinship to the deceased will be the one more deserving of a share in the inheritance as compared to the farther - even though, the farther may be poorer and more needy. If we set aside the principle of nearness in kinship and use the need or the beneficial effects for some relatives as the criterion, it can neither turn into a rule nor can it take the form of a settled and solid law, because any criterion, other than nearness in kinship, will inevitably be temporary as based on opinion because poverty and need or usefulness are not permanent. Conditions change. Levels change. Under such conditions, there will appear a host of claimants and those responsible for settlement would have a hard time in arriving at decision.

The problem of an orphaned grandson's inheritance

If this Qur'ānic principle is understood clearly, the problem of an orphaned grandson's inheritance - which has been made to look like a disputed issue for no sound reason - resolves itself automatically on the basis of a categorical decision. In other words, if an orphaned grandson is more needy as compared to the son, but, in accordance with the law of '*al-aqrabūn*' (the nearest in kinship), he cannot claim a share in the inheritance because he is not 'the nearest' in the presence of the son, other arrangements have been made to take care of his needs. One such arrangement appears in the next verse.

This religious position has been opposed by none but some of the contemporary, westernized modernists. Other than these, the entire Muslim *Ummah* has been holding the belief, as clarified by the Qur'an and the Ḥadīth, that the grandson will not inherit in the presence of a son of the deceased, irrespective of whether his father is dead or alive.

The right of inheritance is operative in everything owned by the deceased

The phrase *بِمَا تَرَكَ* (be it small or large) in this verse corrects another custom practiced by some ignorant people where some things or properties were assigned to special inheritors. For example, a horse or some weapon like a sword could only be inherited by young males as a matter of right. Others were deprived of these. The instruction given by the Holy Qur'an makes it very clear that in everything under the

ownership of the deceased, be it big or small, there is a standing right of all inheritors. It is not permissible for any inheritor to keep anything special for himself before the total inheritance has been formally distributed according to rules.

Fixed shares in inheritance have been determined by Allah

The last phrase *نَصِيبًا مَّفْرُوضًا* (a determined share) in verse 7 is to stress that different shares fixed for different inheritors in the Holy Qur'an have been determined as such by Allah Almighty. Nobody has any right to add or delete or change or transpose any of these by personal opinion or analogical deduction.

Inheritance is a compulsory transfer of ownership

This particular word, *مَفْرُوضًا* (*mafrūḍan*: determined) throws light on yet another principle, that is, the ownership which passes on to inheritors through the law of inheritance is automatic and compulsory. It does not require the acceptance or consent of the inheritor nor is it necessary that he be satisfied with it. The fact is that, even if he were to make a clear declaration that he will not take his share, still then, he is the owner of his share in the sight of the Shari'ah. But, if he does not want to keep his share, he may, after having become the owner, gift it to somebody or sell it or distribute it, in accordance with the rules of Shari'ah.

A sign of goodwill to other relatives

It is likely that there are some relatives of the deceased who cannot receive a share from his inheritance according to the rules of Shari'ah. At the same time, it is obvious that everyone does not know the details of the system of share distribution. Generally, every relative would like to have some share out of the inheritance. Therefore, relatives who have been excluded under the provisions of the Islamic law of inheritance may feel disappointed at the time of the distribution of inheritance, specially so when they are physically present at that time, and more so when there are some orphans and poor and needy among them. A scenario in which other relatives are walking away with their respective shares while they simply look on is terrible.

Now look at the beauty and delicacy of the Qur'anic arrangement of things. On the one hand, there is the just rule offered by the Qur'an itself - that the nearer in kinship shall exclude the farther. On the

other hand, there is that wonderful concern for the disappointment of 'the excluded farther'. Therefore, a regular verse (8) has been devoted to carry the necessary instruction as to how this situation will be handled:

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

It means that distant relatives, orphans and the needy who are to be excluded from having a share in the inheritance and who, nevertheless, show up at the time of its distribution, then, it is the moral obligation of those who get a share in the inheritance that they voluntarily give them some of it, which would become an act of charity for them, and certainly, a modality of reward from Allah. At a time like this, when wealth and property are coming to them, without their having made any effort, simply through the mercy of Allah Almighty - then, their own hearts should beat with the urge to give whatever they can, in the way of Allah, an example of which appears in another verse (Al-An'am: 6:141) cited below:

كُلُوا مِنْ ثَمَرِهِ إِذَا أَثْمَرَ وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ

That is, eat the fruit of your farm when it bears fruit and on the day of its harvesting give away the due (of the poor and the needy) on it.

In short, the fact that distant kindred, orphans and the needy assemble at the time of the distribution of inheritance should be no cause of irritation. On the contrary one should be grateful to Allah that He has bestowed on him something he did not work for, therefore, it will be good to give away a part from it as a token of gratitude. In fact, one should take it as a God-sent opportunity to let these people have a little from what they have received which would certainly compensate the sense of deprivation faced by these people. Incidentally, this includes and covers the grandson of the deceased who was excluded from the inheritance.

His uncles and paternal aunts should actually be pleased to give him something each from their respective shares.

The statement at the end of the verse (8): وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا (and speak

to them in fair words) gives the guideline in case these people are not satisfied with the manner and quantum of what they get but start demanding a share equal to that of everybody else, then, this demand being unjust and contrary to Shari'ah, there is no way to satisfy it, however, instead of behaving to them in a crude manner which may hurt their feelings, the actual rules of Shari'ah should be explained to them in a polite manner. They can be told that they do not have a share in the inheritance as stipulated by the rule of Islamic law and that which has been given to them has been given to them as a gift. At this point, one should make sure that the gift or donation given to such people does not come out of the total property inherited. Here it is important that the donation should be made by adult inheritors present, from their respective shares. Such gifts from the shares of the minor and the absent are not allowed in Shari'ah.

Fear Allah while distributing inheritance

The third verse (9) addresses Muslims in general exhorting them to make it certain that the inheritance of the deceased reaches his children fully and fairly. They must abstain from any mode of action which may affect the share of the children adversely. The general sense of the verse covers the eventuality when one sees a Muslim making a will or disposing property off in a manner which could cause damage or loss to his children and other inheritors. If so, one must stop him from such bequeathal or such disposal, very much like what the Holy Prophet صلى الله عليه وسلم did when he stopped the blessed Companion, Sayyidnā Sa'd ibn Abī Waqqās رضى الله عنه from giving the whole, or half, of his property in charity (*Sadaqah*), allowing him to give only one-third of his property as such (Mishkāt, Bāb al-Waṣāyā, p. 265), because, 'If the whole, or half of the property was given in charity, the share of the inheritors would have either been all consumed, or curtailed.

Also included in the general sense of the verse is that guardians of the orphaned children should protect their property and give it to them in full when they become mature. They should take pains to accomplish this mission of trust and never let the least negligence on their part affect their duty; if they wish that others treat their children well after them, without causing them any harm or injustice, then,

they should treat the children of others - the orphans - in the same manner.

Misappropriation of the property of the orphans

The fourth verse (10) carries a severe warning for those who pilfer or dispose off the property of orphans unlawfully. It declares: 'Surely, those who eat up the property of the orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell.'

This verse equates the property of the orphan with the fire of Hell. Many commentators have interpreted this metaphorically, that is, eating the property of the orphans unjustly is like stuffing one's stomach with fire - because this is what is going to happen to him ultimately in the Hereafter. But, those with deeper insights and proofs do not support the presence of some figure of speech here. According to them, whatever is eaten up from the property of the orphan unlawfully is, in reality, nothing but fire - even though, it may not look like fire at that time. This is like somebody saying that the match-box in his hand was fire, or the piece of arsenic, a killer. Obviously, handling a match-box does not burn the hand, nor does arsenic kill a man by simple handling, not even by putting it in the mouth. However, a slight friction reveals that somebody who called the match-box a fire was right; and similarly, once the arsenic goes down the throat, we know that the one who called arsenic a killer was true. Common generalizations of the Holy Qur'an also support the view that whatever deeds, good or evil, man is doing, these very deeds are the trees, the flowers and the fruits of Paradise, or the embers of Hell - even though, their form here is different, but these will come forth on the Day of Doom transformed in their true forms. The Holy Qur'an says: **وَوَجَدُوا مَا عَمِلُوا حَاضِرًا**. (Kahf - 18:49) that is, on the Day of Doom, they shall find what they did - present! In other words, the punishment and the reward they shall see will be, in reality, the result of their own deeds.

It appears in some narrations that those who devour the orphan's property unjustly will be raised on the Day of Doom in a state that flames of fire will be seen coming out from inside their bellies through their mouths, nostrils, ears and eyes.

And the Holy Prophet صلى الله عليه وسلم said that a set of people will be raised on the Day of Doom with their mouths erupting with fire. His

noble Companions asked as to who these could be. He said: "Have you not read it in the Qur'an? (which says): إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا (those who eat up the property of the orphans unjustly)." (Ibn Kathīr, v.1, p. 456)

The gist of the meaning of the verse is that the property of the orphan eaten up unjustly will be, in reality, the fire of Hell, though it may not be sensed as fire at that time. It is for this reason that the Holy Prophet صلى الله عليه وسلم has given very clear instructions to observe most stringent precaution in this matter. Sayyidnā Abū Hurairah رضى الله عنه narrates that the Holy Prophet صلى الله عليه وسلم said: أُخْرِجَ مَالُ الصَّغِيرَيْنِ الْمَرْأَةِ وَالْيَتِيمِ (I warn you to abstain from the property of the two weak ones - the woman and the orphan.) (Ibn Kathīr, v.1, p.456)

A review at this point shows that the entire first section of Sūrah al-Nisā' contains injunctions relating to orphans. They bid protection of the property of the orphans, avoidance of encroaching on their property as one's own and the giving of their due share from the property they have received in inheritance; and they forbid the hasty consumption of the property of the orphans for fear of their growing mature and assuming its control, or the taking of orphaned girls in marriage and lowering their dower, or to usurp their property. In the end the text says that eating up the property of the orphan unjustly is filling of bellies with fire because, after their death, such people will be recompensed by fire filled in their bellies. Mark the use of the word, 'ya'kulūna' and the warning given to those who 'eat up' the property of the orphan. It means that using the property of the orphan in whatever manner it may be - eating, drinking, consuming, utilizing - is totally unlawful, and a sure cause of Divine wrath. The punishment of eating up what belongs to somebody else unjustly and without any right covers all sorts of uses.

When someone dies, the right of every inheritor attaches itself to everything he owns, to each and every part, to everything big or small. It is tragic that the minor children of the deceased become orphans. Mostly, such children face a certain degree of injustice and excess in every home and everyone who assumes control of the property after the death of the father of these children - whether an uncle or elder brother or mother or some guardian or trustee - falls into doing things forbidden in this section. To begin with, they just go on postponing the

distribution of the property for years together, spending a little here and there to feed and clothe these children. After that, they open up and become all too liberal in spending this jointly-held property on religiously unacceptable practices, customs and wasteful heads of expenditure. They would even spend it on their own person and go on to the limit of manipulating legal documents entering the names of their own children in place of the orphans. These are things hardly a home remains unaffected from.

The donations made for orphans in religious schools and orphanages must be spent on them. Not spending these on the orphans is a form of 'eating up' the property of the orphan.

Rulings

1. Inheritance includes everything owned by the deceased, even the clothes on the dead body. People tend to give these out in charity without realizing that they belong to what has been left by the deceased. There are places where copper utensils are given out to the poor well before the total property is formally distributed, although minors and absentees from among the inheritors have rights in all such things. The proper method is to first distribute the property in accordance with whatever shares are to be received by children, wife, parents, sisters and anyone else as stipulated by the Islamic law of inheritance. Once the ownership passes to sharers, it is upto them who can, if they so desire willingly, give away part of it in charity on behalf of the deceased. If the receivers of such shares wish to do that jointly, let them make sure that they are all adults, for the permission of the minor is not valid. As far as inheritors who are absent are concerned, nothing can be taken from their shares without their permission.

2. The sheet spread over the *Janāzah* while carrying the deceased to the graveyard is not part of the required shroud (*Kafn*). It is not permissible to buy it from the proceeds of the property left by the deceased, because that is something held jointly. However, if someone was to cover the cost on his own, that would be permissible. There are places where a prayer-mat is torn out of the cloth purchased for the shroud and is used by the Imām who leads the *janāzah* prayers. The mat is later given to the Imām. This expense is extra to the needed shroud and it is not permissible to buy it from the proceeds of the hith-

erto combined inheritance.

3. In some areas, new utensils are procured for bathing the deceased and which are broken after use. First of all, there is no need to buy new ones for a bath can be given using utensils already in the house; and if, for any reason, they have to be purchased, then, breaking them is not permissible. It not only amounts to wasting of property but also means causing loss to orphans and absent inheritors whose due rights are attached to the total property.

4. Any expenses before the distribution of inheritance, such as entertainment of guests or charity and alms, are totally impermissible. Giving charity and alms in this manner brings no merit or reward for the deceased. In fact, such giving under the notion that it will bring good returns for the departed soul is a far greater sin. The reason is simple. After the death of a person, all his property belongs to the inheritors in proportion to their respective rights in it. Then, there are orphans among them. Giving away things in charity from the combined property which includes the share of the orphan is like stealing from somebody's property and giving it in charity on behalf of the deceased. This is not correct. First distribute the property, then, let the inheritors give in charity from their shares for the good of the deceased, if they so desire.

It is better not to go for charity and alms from the combined inheritance even before the actual distribution, even though it be with the permission of inheritors. This is because the permission of whoever is an orphan among the inheritors is not just valid right from the outset. As for the adult ones, it is not necessary that their 'permission' comes out of their willing heart. It is quite possible that they are left with no option but give their permission lest they are disgraced before others. In other words, they may say yes with a heavy heart just to ward off the sense of shame.

Let us look at an anecdote ascribed to a pious elder, which will further clarify the issue. This pious elder went to visit a sick Muslim. He had hardly sat with the patient for a little while when the latter died. The sage immediately put out the lamp burning there and gave someone the money to buy oil and re-light the lamp with it. When people around asked him for the reason of his doing so, he said that

this lamp was under the ownership of this person until such time that he was alive and it was correct to use that light. Now that the deceased has left this mortal world, his inheritors have the necessary right over everything he owned. So, it is only through the permission of all inheritors that we can use this lamp and since all of them are not present here, this lamp was lighted at a personal cost.

Verse 11

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ آبَاؤُهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ وَالْأَبَاؤُكُمْ وَابْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۖ فَرِيضَةٌ مِّنَ اللَّهِ إِنْ أَلَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

Allah directs you concerning your children: for a male there is a share equal to that of two females. But, if they be (only) women, more than two, then they get two-third of what one left behind. And if she be one, she gets one-half. And for his parents, for each of them, there is one-sixth of what he left in case he has a child. But, if he has no child and his parents have inherited him, then, his mother gets one-third. And if he has some brothers (or sisters), his mother gets one-sixth, all after (settling) the will he might have made, or debt. Your fathers and your sons - you do not know who, out of them, is closer to you in being beneficial. All this is determined by Allah. Surely, Allah is All-Knowing, All-Wise. [11]

People entitled to inheritance were briefly mentioned in verse 7 of the previous section which also carries details about some kinds of those so entitled. Also given there are their shares under different circumstances. More details in this connection shall be appearing later towards the end of this Sūrah. Remaining shares have been identified

in *aḥādīth*. Muslim jurists have collected and codified all details of the rules of inheritance from the Qur'ān and Ḥadīth, giving it the status of a permanent science which, in Islāmic terminology, is known as '*Ilmul-Farā'id*' (the Science of the Laws of Inheritance).

The present verse (11) describes shares for children and parents along with some related aspects of inheritance.

INHERITANCE

Preliminary Rights on the Property of the deceased

According to the principles of Islāmic law, the expenses incurred on the shrouding and burial of a Muslim deceased should be the first thing to be paid out of the property left behind by him. This should be done in accordance with Shari'ah avoiding the extremes of extravagance or stinginess. After that, his debts should be paid. If the amount of his debts is just equal to the property left by him, or even more than that, then, there will be no distribution of inheritance and no application of any will. And in case there remains some property after paying debts, or if there are no debts, then, subject to any will made by him which should not be a will of sin, then, this will should be carried out to the extent of one-third of his remaining property. If someone makes a will for his entire property, it will not take effect. Such will shall be considered valid for only one-third of his property. The fact is that making a will for more than one-third of the property is not appropriate; and if it is done with the intention of excluding inheritors, it becomes a sin.

Once the debts are paid and the will has been applied within one-third, the rest of the property should be distributed among the legal heirs, details of which are available in books of *Farā'id*, the Muslim law of inheritance. Incidentally, if the deceased has made no will, then, following the payment of debts, the whole of the remaining property shall be distributed as inheritance.

The share of children

As it has appeared in the previous section, the distribution of inheritance shall be on the principle of *الاقرب فالأقرب* (the nearest, then, the nearest). Since the children of the deceased and his parents are

the nearest, therefore, they inherit under all conditions. These relations are the nearest and most direct of all relationships that human beings have, others being indirect. So, the Holy Qur'an takes up their shares first and beginning from the share of children, it says:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

Allah directs you concerning your children: for a male there is a share equal to that of two females.

This is a universal rule which entitles boys and girls both as recipients of inheritance, determines the shares of each and, at the same time, unfolds the operative rule in the event the deceased leaves behind both male and female children when their shares in the property will be distributed in a way that each boy gets twice that of a girl. For instance, if someone leaves behind one boy and two girls, the property will be split in four portions or shares out of which 2/4 will be given to the boy and 1/4 to each girl.

The importance of giving shares to girls

The Holy Qur'an demonstrates visible concern to ensure that girls are given their share when it mentions the share of girls as a basis for determining the share of boys. In other words, instead of saying - 'for two females there is a share equal to that of one male' - it has elected to say: لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ (for a male there is a share equal to that of two females.) Those who do not give shares to sisters on the pretext that they have forgone their right are in error, because their sisters usually do not forgo their rights willingly. Done reluctantly, with the knowledge that they are not going to get anything anyway, they think, why create bad blood between brothers and sisters? Such an act of forgiving is not valid under Islamic law. Their claim remains due against brothers - and those who usurp inheritance are terrible sinners. In case minor girls hold shares in such inheritance, not giving them their shares is a sin committed twice by usurping the share of a legal heir and by devouring the property of an orphan.

As part of further explanation later, the share of girls has been described by saying:

فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ

It means that, if there is no male child and there are only girls and

they are more than one, then, they shall get two-third of the inherited property in which all girls will be equal sharers. The remaining one-third will go to other rightful heirs of the inheritance, such as the parents of the deceased, wife or husband. Two girls and more than two will all share in the two-third.

The share of 'more than two' girls appears in the Qur'ānic verse very clearly *كُوفَى اثْنَتَيْنِ* (more than two). However, if there are two girls only, they are governed by the same rule which governs more than two. The proof appears in Ḥadīth:

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ خَرَجْنَا مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ حَتَّى جِئْنَا امْرَأَةً مِنَ الْأَنْصَارِ فِي الْأَسْوَافِ فَجَاءَتِ الْمَرْءُ بَابَتَيْنِ لَهَا فَقَالَتْ يَا رَسُولَ اللَّهِ هَاتَانِ بَنَاتَانِ بَنَاتَا ثَابِتِ بْنِ قَيْسٍ قَتَلَ مَعَكَ يَوْمَ أُحُدٍ وَقَدْ اسْتَفَاءَ عَمَهُمَا مَالَهُمَا وَمِيرَاثَهُمَا كُلَّهُ وَلَمْ يَدَعْ مَالًا إِلَّا أَخَذَهُ فَمَا تَرَى يَا رَسُولَ اللَّهِ فَوَاللَّهِ لَا تَنْكِحَانِ أَبَدًا إِلَّا وَلَهُمَا مَالٌ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: يَقْضَى اللَّهُ فِي ذَلِكَ وَقَالَ نَزَلَتْ سُورَةُ النِّسَاءِ "يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ" الْآيَةَ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ادْعُوا لِي الْمَرْءَ وَصَاحِبَهَا فَقَالَ لِعَمَّهُمَا اعْطِيَهُمَا الثَّلَاثِينَ وَاعْطِ امَّهُمَا الثَّمَنَ وَمَا بَقِيَ فَلَكَ، (ابوداؤد كتاب الفرائض، وبعناه في الترمذی ابواب الفرائض)

Sayyidnā Jābir ibn 'Abdullāh has reported the following event: "Once we went out with the Messenger of Allah ﷺ until we passed by an Anṣārī woman in the neighbourhood of Aswāf. The woman came along with her two girls and said: O Messenger of Allah, these two girls are daughters of Thābit ibn Qays (my husband) who fell a martyr at the battle of Uhud while with you. The uncle of these girls has taken possession of whatever they had of their entire inheritance and has left nothing for them. What do you say about it, O Messenger of Allah? By Allah, these girls can never hope to be taken in marriage by anyone unless they have some assets. Then, the Holy Prophet ﷺ said: Allah will decide in this matter

Sayyidnā Jābir رضى الله عنه says: When this verse of Sūratun-Nisā' *يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ* was revealed, the Holy Prophet ﷺ said: Call that woman and the man she mentioned (the brother of her deceased husband who had taken possession of his entire property). He said to the uncle of the girls: Give the girls two-

thirds of the entire property; their mother, one-eighth and what remains is for you.

(Abū Dawūd, Kitāb al-Farā'id & Tirmidhī, Abwāb al-Farā'id)

In the case mentioned in the *ḥadīth*, the Holy Prophet صلى الله عليه وسلم gave out two-third to two girls as well, following the very rule of more than two which appears in the verse of the Holy Qur'an under reference.

After that, it was said: *وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ* It means: If the deceased left behind one girl only and no other children, then, she will get one-half of what her father or mother have left behind. The rest will go to other inheritors.

The share of parents

The text, moving to the share of the parents of the deceased, mentions three states:

1. Firstly, the deceased may have left behind parents who are still alive, and children too, whether only one boy or girl, in which case, the father and mother will get 1/6 each. The legacy that remains will go to children, wife or husband. There are particular circumstances when some of the remainder returns back to the father which is in addition to the one-sixth fixed for him. In the terminology of *'Ilmu'l-Farā'id* (The Science of the Laws of Inheritance), such entitlement is known as the entitlement of "*Ta'sīb*: تعصيب (Agnatic kinship).

2. Secondly, under a situation when the deceased has no children, brothers or sisters, but does have parents still living, the mother will get 1/3 of the inherited property while the father will get the remaining two-third. This rule governs a situation when the husband or the wife of the deceased is not alive to share in his inheritance. If the husband or wife is present, their share will be taken out first and from what remains, 1/3 will go to the mother and 2/3 to the father.

3. Thirdly, under a situation when the deceased has no children but does have brothers and sisters whose number is two, whether two brothers or two sisters, or more than two, then, under that situation, the mother will get one-sixth and, if there are no other heirs, the remaining 5/6 will go to the father. As evident, the presence of brothers and sisters has reduced the share of the mother, but the brothers and

sisters will get nothing because the father is nearer as compared to brothers and sisters. What remains will go to the father. In this situation, the share of the mother has come to 1/6 instead of 1/3. In the terminology of 'Farā'id', this is known as "*Hajb al-Nuqṣān*". The presence of these brothers and sisters causing reduction in the share of parents, irrespective of whether they are real or whether they are from the same father but different mother or whether from the same mother but different father, under all such conditions, their presence will reduce the share of the mother - subject to their being more than one.

The text, after describing the fixed share, says:

أَبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

It means: 'These shares for children and parents have been determined by Allah Almighty Himself in His infinite wisdom because He is Wise and He knows everything. The shares fixed have great considerations behind them. If the distribution of inheritance was left to your opinion, you would have made beneficialness the criterion of such distribution. But, who will be the best to receive or deliver real benefit is something which would have been difficult for you to ascertain with any measure of certainty. Therefore, 'nearness in kinship' was preferred to 'being beneficial' as the criterion of the injunction.

This verse of the Holy Qur'an clearly declares that the shares of inheritance determined by Allah Almighty are settled injunctions from Him. Nobody has any right to enforce opinion or to increase or decrease its stipulations. These should be accepted whole-heartedly. This command from everyone's Creator and Master is based on what is wise and beneficial for human beings. There is no aspect of benefit outside the expanse of His knowledge and there is no command He gives bereft of some or the other element of wisdom. Man cannot, all by himself, recognize his gain and loss in the real sense. If this question of the distribution of inheritance was left to man's personal opinion, it was certain that man would not have decided correctly because of his limitations in understanding and, as a result of which, lack of moderation and justice would have affected the distribution of

inheritance. So, Allah Almighty, in His most exalted majesty, took this responsibility in His hands so that justice and equity reign supreme in the distribution of property and the capital left by the deceased circulates in the hands of competent inheritors in a manner which is just and equitable.

Verse 12...

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ﴿١٢﴾

And for you there is one-half of what your wives left behind, in case they have no child. But, if they have a child, you get one-fourth of what they left, after (settling) the will they might have made, or debt. And for them (the wives) there is one-fourth of what you left, in case you have no child. But, if you have a child, they get one-eighth of what you left, after (settling) the will you might have made, or debt. [12...]

Upto this point, the text has described the shares of those competent to inherit, those who had the affinity of lineage and birth with the deceased. The present verse talks about some others who do have the competence but are not related by lineage. Instead, they are related by marriage. Details appear in the Commentary.

Commentary

The share of the husband and the wife

In this part of verse 12, the shares of the husband and the wife have been determined. The share of the husband has been mentioned first, perhaps to show its importance because after the death of the wife, the husband becomes part of some other family. If the wife dies at the home of her parents with her assets too being there, her people may avoid giving the share due to the husband. By describing the right of the husband first, the Holy Qur'an has possibly condemned

this practice. To explain in details, it means that in case the deceased wife has left no child behind, the husband will get, after the payment of debt and execution of will, one-half of the total property left by the deceased. Out of the remaining half, other heirs, such as the parents of the deceased, her brothers and sisters, will get their shares according to rules set for them.

If the deceased wife has left children - one or two or more, whether male or female, either from the same husband, or from some previous husband, then, the present husband will get, after the payment of debt and execution of will, one-fourth of the total property left by the deceased woman. Shares from the remaining three-fourth will go to other heirs.

If it is the husband who dies leaving his wife behind and leaves no children, the wife will get, after the payment of debt and the execution of will, one-fourth of the total property left by the deceased. And if he has left a child - either from the present wife or from some other wife - she will get, after the settlement of debt and will, a one-eighth share. And if the deceased husband had more than one wife, all alive at the time of his death, the attending details shall remain the same, however, the share prescribed for the 'wife' (i.e. 1/4 or 1/8) shall be divided equally between all the wives. In other words, every woman will not get a share of one-fourth and one-eighth. Instead, all wives will share the one-fourth or one-eighth equally. Then, under both these conditions, the inheritance which remains after settling the share of the husband/wife will be distributed among other heirs left by them.

Ruling

It must be ascertained before the distribution of inheritance that the *mahr* (dower) of the wife has been paid. If the deceased has not paid the *mahr* of his wife, this will be taken as debt, and will have to be paid first from the total property, like all other debts. The inheritance will be distributed only after that. It should be noted that the woman, after having received her *mahr*, shall go on to receive her fixed share in the inheritance as a competent inheritor. And in case, the property left by the deceased is not more than the value of dower, and nothing remains after it is paid, the entire property will be given to the woman against her debt of *mahr* very much like other debts and,

as a result, no heir will receive any share from the inheritance thus used up.

... Verse 12

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلَثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢...﴾

And if the man being inherited, or the woman, is *Kalālah* (having no father or son to inherit) and he has a brother or a sister, then, for each of them there is one-sixth. And if they are more than that, they shall be sharers in one-third, after (settling) the will that might have been made, or debt, causing no damage. All this is prescribed by Allah. And Allah is All-Knowing, Forbearing. [...12]

After having made a brief mention of rights of relations emerging from lineage and marriage, the text now introduces the injunction which covers the inheritance of a particular deceased who has left no children or parents, details of which appear below

The inheritance of *Kalālah*

This later part of verse 12 describes the injunction relating to the inheritance of *Kalālah*. There have been many definitions of *Kalālah*. Al-Qurṭubī reports these in his *Tafsīr*. According to the most well-known definition, 'A person who dies leaving no ascendants and descendants is *Kalālah*.'

'Allāmah al-Ālūsī, the author of *Ruḥ al-Ma'ānī* says that *Kalālah* is really a verbal noun used in the sense of *Kalāl* meaning 'to become exhausted' which denotes 'weakness'. The name *Kalālah* has been applied to every relationship other than that of father and son because that relationship is weak as compared to the relationship of father and son.

Moreover, the word, *Kalālah* has also been applied to the deceased who left no son or father to inherit, as well as to the inheritor who is

neither the son nor the father of the deceased. The lexical derivation requires that the word, ذُو : *dhū*, should be deemed as understood though not expressed explicitly. Thus *Kalālah* will be taken in the sense of *Dhū Kalālah*, meaning 'one having weak relation'. Later on, the word also came to be applied to the property left as inheritance by a deceased having no son and father.

In gist, if a person, man or woman, dies and leaves behind neither father nor grandfather nor children, but does leave a brother or sister from the same mother and different father, the brother will get 1/6 and, if there is none, the sister will get 1/6. However, if they are more than one (for example, there may be one brother and one sister, or two brothers and two sisters) then, they all will share one-third of the entire property of the deceased. Here, the male will not get twice that of the female. 'Allāmah al-Qurṭubī says:

وَلَيْسَ فِي الْفَرَائِضِ مَوْضِعٌ يَكُونُ فِيهِ الذَّكَرُ وَالْأُنْثَى سَوَاءً إِلَّا فِي مِيرَاثِ
الْأَخَوَةِ لِلْأُمِّ

The share of the brother and sister

Let it be clear that this verse refers to the share of *Akhyāfī* brothers and sisters (i.e. from the same mother and different fathers; also referred to as half-brothers and half-sisters). Though, this restriction has not been mentioned in the present verse, but consensus holds it as creditable. The *Qirā'ah* or rendition of Sayyidnā Sa'd ibn Abī Waqqāṣ رضى الله عنه in this verse is: وَلَهُ أَخٌ أَوْ أُخْتٌ مِنْ أُمِّهِ (and he has a brother or sister from his mother) as has been reported by al-Qurṭubī, al-Ālūsī, al-Jaṣṣāṣ and others. Although this rendition has not come to us through *tawātur* (a consistent narration of a very large number of persons in all ages) but because of the consensus of the entire Muslim *ummah*, it is worth practicing. Another clear proof is that Allah Almighty mentions the inheritance of *Kalālah* at the end of Sūrah Al-Nisā' as well. If, it has been said there, there is one sister, she will get half. And if there is one brother, he will inherit the entire property of his sister. And if there are two sisters, they will get 2/3. And if there are several brothers and sisters, the male will be given twice that of the female. This injunction appearing at the end of the Sūrah refers to 'Ainī (real and full) brothers and sisters, and to 'Allātī (from the same father and

different mothers) brothers and sisters. If 'Allatī and 'Ainī brothers and sisters were to be included here, it will cause a contradiction in injunctions.

The issues regarding will (Waṣīyyah)

The shares of inheritance have been described thrice in this section and it has been said that this distribution of shares comes after the execution of will and the payment of debt. As it has been stated earlier, one-third of what remains of the property, after taking care of the cost of the funeral for the deceased, and payment of debts, shall be applied to the execution of the will. If the will exceeds the extent of one-third, it is not legally enforceable. According to the rule of Shari'ah, the payment of debt comes before the execution of will. If the entire property is used up in paying debts, there will be no will to execute and no property to distribute. At all the three places where 'will' has been mentioned, 'it' appears before 'debt'. As obvious, this gives the impression that the right of 'will' precedes 'debt'. Removing this misunderstanding, Sayyidnā 'Alī رضي الله عنه said:

انكم تقرأون هذه الآية مِنْ بَعْدِ وَصِيَّةٍ يُوصُّونَ بِهَا أَوْ دَيْنٍ، وإن رسول الله صلى الله عليه وسلم قضى بالدين قبل الوصية . (مشكاة بحواله ترمذى ص ٢٦٤)

(You recite the verse: مِنْ بَعْدِ وَصِيَّةٍ يُوصُّونَ بِهَا أَوْ دَيْنٍ that is, 'after settling the will they might have made, or debt' [where 'will' comes first] but [practically] the Holy Prophet, may peace be upon him, has settled, 'debt' before 'will').

Still, we have to know the point as to why will follows debt 'practically' while, in words, it has been mentioned earlier. In this connection, the author of Rūḥ al-Ma'ānī has this to say:

وتقديم الوصية على الدين ذكراً مع أن الدين مقدم عليها حكماً لا ظاهراً
كمال العناية بتنفيذها لكونها مظنة للتفريط في اداؤها الخ .

It means that the mention of will before debt in this verse is to emphasize upon the enforcement of the wills. Since the beneficiary of a will deserves it without any price paid by him, and often without having a kinship with the testator, it was likely that the inheritors ignore to enforce it or, at least, may cause unnecessary delay in its execution, because they may have not liked to see the property that

was to be inherited by them going to somebody else. So, it was to keep up the importance of will that it was mentioned before debt. Then, it is also not necessary that every person incurs a debt, and if a person incurs it during his life-time, it is not necessary, that the said debt remains unpaid upto the time of his death. And even if the debt was due to be paid at the time of death, even then, since the claim of debt comes from the debtors to which the inheritors cannot say no, the likelihood of any shortcoming in this respect is slim. This is contrary to the case of will in which the deceased, when he bequeaths part of his property, earnestly desires that he should invest it in something good which serves as ongoing charity on his behalf. Since, there is no chance of a claim on this bequeathed property from any side, there was a possibility that the inheritors themselves might fall into some sort of shortcoming, so, it was to offset this likelihood that the 'will' has been mentioned first everywhere as a special measure.

Rulings

1. If there is no debt and no will, the entire property, after taking care of the funeral expenses, will be distributed over the inheritors.

2. Making a will in favour of a heir is not lawful. If someone makes a will in favour of his son, daughter, husband or wife, or for someone else who is going to get a share in his inheritance, then, this will is not enforceable. The inheritors will get what is coming to them as their share in the inheritance. They are not entitled to more than that. The Holy Prophet صلى الله عليه وسلم said in his famous address on the occasion of his last Hajj:

إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِرِوَارِثٍ . (مشكوة بحواله ابو داود ص

(٢٦٥

(Surely, Allah has given every person his (or her) right. So, there is no will for an inheritor.) (Mishkat with reference to Abū Dāwūd, p. 265)

However, should other inheritors permit, the will made in favour of a particular inheritor, may be executed first and, then, the rest of the property may be distributed in accordance with the method laid down by the Shari'ah, in which the particular inheritor will also get his fixed share from the inheritance. Some *ḥadīth* narrations do carry the excep-

tion of *غَيْرُ مُضَارٍّ* (unless inheritors wish). (as in al-Hidāyah).

The words *غَيْرُ مُضَارٍّ* (causing no damage) appearing after the rules of inheritance of *Kalālah* have a special significance. They are to warn that even though the execution of the will and paying off the debts have precedence over the shares of the heirs, yet this rule should not be misused to cause harm to the genuine inheritors.

If anyone makes a will or makes a false admission of indebtedness so as to deprive inheritors, then, he is doing something strictly forbidden and is committing a major sin.

There are many ways damage can be done through debt and will. For example, one may deliberately lie that he is in debt, just to let that be given to a friend or somebody else. Or, he may show something special which he owns personally as something he holds in trust for somebody so that it can stay out of the total inheritable property. Or, one may make a will for property beyond the extent of one-third. Or, he lies about an unpaid loan he gave to somebody and says that the debt was paid off so that it does not pass on to the inheritors. Or, one may, during his illness culminating in death (مرض الموت), make a gift of more than one-third in the name of somebody.

These are forms of causing damage. Every legator who is going to bid farewell to this mortal world should do his best to stay away from causing such damages during the last moments of his life.

It should be noticed that although the words 'causing no damage' have appeared only with the rules relating to *Kalālah*, however, the rule laid down by them is general and is also understood at two previous places where the precedence of will and debt has been mentioned in these verses. Therefore, it is not the *Kalālah* only who should refrain from causing harm to his inheritors, but the same rule applies to all persons who wish to make a will.

The emphasis on distribution according to fixed shares

Towards the end of the verse, after the shares of inheritance have been described, Allah Almighty has said: *وَصِيَّةٌ مِنَ اللَّهِ* (All this is prescribed by Allah). It means that it is imperative to act upon whatever has been prescribed in relation to shares as fixed and the payment of debt and the execution of will as emphasized. Being a

mandate and injunction of supreme significance, one should do nothing to contravene it. Then, as additional warning it was said: **اللَّهُ عَزِيمٌ حَكِيمٌ** (And Allah is All-Knowing, Forbearing). It means that Allah knows everything and He has apportioned these shares knowing everybody's true state of being as in His knowledge. Whoever obeys and acts in accordance with these injunctions, this good deed of his shall not remain outside the reach of His knowledge. And whoever contravenes these injunctions, this evil conduct of his shall certainly appear as it is in the knowledge of Allah for which he shall be held accountable.

In addition to that, if a deceased person has caused damage to his heirs through debt or will, Allah knows that as well. So, one should never be fearless from Allah's punishment. However, it is quite possible that Allah Almighty may not punish a person right here in this mortal world, because He is Forbearing. But, the one who disobeys and acts in contravention should better not deceive himself by thinking that he really got away.

Verses 13 - 14

تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي
 مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا وَ ذَلِكَ الْفَوْزُ الْعَظِيمُ ﴿١٣﴾
 وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا
 فِيهَا وَلَهُ عَذَابٌ مُهِينٌ ﴿١٤﴾

These are the limits set by Allah. And whoever obeys Allah and His Messenger, He will admit him to gardens beneath which rivers flow, remaining there for ever. And that is a great success. [13] And whoever disobeys Allah and His Messenger and crosses the limits set by Him, He shall admit him to the Fire, remaining there for ever. And for him there is a humiliating punishment. [14]

Commentary

It is the consistent style of the Holy Qur'an that whenever it has described the beliefs and injunctions prescribed by Allah, it is followed by promises of reward or warnings of punishment.

This is what has been done here in these two verses after mentioning the rules of inheritance. The purpose is to stress upon Muslims to obey these injunctions.

SOME ADDITIONAL RULES OF INHERITANCE

A Muslim cannot inherit from a *Kāfir*

Although, the distribution of inheritance is based on nearness of kinship, but there are certain exceptions to this rule. First of all, the deceased and his inheritor should not be from two different religions. Therefore, a Muslim will not inherit from any *kāfir* and no *kāfir* from a Muslim, no matter what lineal relationship they may have between them. The Holy Prophet صلى الله عليه وسلم said:

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ (مشكوة ص ٢٦٣)

(The Muslim does not inherit the *kāfir*, nor does the *kāfir* (inherit) the Muslim.) (Mishkāt, p. 263)

This rule relates to a situation when a person is a Muslim or a *kāfir* by birth. But, if a person who was first a Muslim, turned away from Islām and became an apostate and died or was killed in that state of apostasy, all his earnings while being a Muslim shall go to his Muslim inheritors, and whatever he may have earned after his apostasy shall be deposited in the *Bayt al-Māl* (Public Exchequer).

But, if a woman becomes an apostate, all her property, whether acquired during her days of Islam or during apostasy, shall go to her Muslim inheritors. However, an apostate as such, man or woman, shall not inherit from any Muslim nor from any other apostate.

The inheritance of the killer

If someone kills a person from whose property he was entitled to receive a share, he shall no longer remain his inheritor and shall be excluded from the inheritance of the person whom he has killed.

The Holy Prophet صلى الله عليه وسلم said: (مشكوة ص ٢٦٣) الْقَاتِلُ لَا يَرِثُ (The killer shall not inherit.) (Mishkāt, p. 263) However, some forms of *qatl al-khaṭā* (accidental or unintended homicide) are excepted from this rule, details of which appear in books of *Fiqh*.

The inheritance of the unborn child

If a person leaves some children and his wife is pregnant, then this

unborn child will also be counted among inheritors. But, since it is either difficult or uncertain to determine the sex or the number of children in the mother's womb, it would be appropriate to postpone the distribution of inheritance until the birth of the child. If, the distribution of property has to be made necessarily, then, as an expedient measure, one must suppose two situations in terms of a boy or a girl and distribute to the inheritors the lesser portion coming out of the two situations. The remaining should be held for the child-to-be-born.

The inheritance of a woman in the period of 'iddah

In case a person divorces his wife and the divorce is revocable, and this person dies before the revocation of the divorce and the expiry of his wife's waiting period, then this woman will get a share in the inheritance, for the marriage is in force.

If a person divorces his wife during his sickness culminating in his death, even though the divorce is irrevocable or pronounced thrice, and he died before the expiry of the waiting period, even then, this woman will get a share in the inheritance. And in order to make her inherit, the longer of the two waiting periods shall be taken as operative in the following manner.

The waiting period following a divorce is three menstrual periods and the waiting period following the death of the husband is four (lunar) months and ten days. The waiting period out of the two which lasts longer shall be prescribed as the waiting period for the aforesaid woman so that the woman may get a share in the inheritance as far as possible.

And if a person divorces his wife, irrevocably or by pronouncing it thrice, prior to any sickness culminating in his death and, a few days later he passes away during the period of his wife's waiting period, then, she will not get a share in the inheritance under this situation. However, if the divorce given was revocable, she will inherit

Ruling:

If a wife secures a separation from the husband at her own instance (كُلٌّ : *khul'*) within the period of his sickness which culminates in his death, then, she will not be an inheritor, even though her husband may die during her waiting period.

The inheritance of 'aṣḥāb'

There are twelve heirs for whom specified shares have been settled and fixed by the Shari'ah known as *Farā'id*. These heirs are called *aṣḥābul-furūd* اصحاب الفروض, that is, 'the possessors of obligatory shares in inheritance as determined in the Holy Qur'ān.' These have been explained earlier. If there is no heir from the category of *aṣḥābul-furūd* or there remains some property after shares have been given to *aṣḥābul-furūd*, this remainder or residue is given to 'aṣḥāb (agnatic heir, or residuary). There are times when one person alone inherits in both capacities. There are other situations when the children of the deceased and his father too become 'aṣḥāb and so do the offspring of the father, that is, the brother.

There are several kinds of 'aṣḥāb or agnates, details of which appear in the books of *Farā'id*. To illustrate, here is an example: *Zayd* died leaving behind four heirs - wife, daughter, mother and uncle. *Zayd's* property will be divided into a total of twenty four shares. Half of these, that is, twelve shares will go to the daughter, three shares to the wife against her 1/8, four shares to the mother against her 1/6, and the residue of five shares will go the uncle in the capacity of his being 'aṣḥāb, the nearest male agnate.

Rulings

1. If there are no 'aṣḥāb (agnatic heirs) the residue of the property following the distribution of shares to *aṣḥābul-furūd*, is also given to them. In the terminology of *Ilmul-farā'id*, this is known as the principle of *Radd* or Return since the residue 'returns' to them in proportion to their shares. However, the husband or the wife is not entitled to this 'return' and they are not given any more than their specified shares.

2. If there is no one from *aṣḥābul-furūd* and no one from 'aṣḥāb either, the inheritance goes to *Dhawil-Arḥām* (maternal kinsmen). There is a large list of *Dhawil-Arḥām* which includes maternal grandsons and grand daughters, offspring of sisters, paternal aunts, maternal uncles, and aunts. Since the subject has lot more details which cannot be taken up in the present context, it is hoped that comments already offered will be sufficient.

Verse 176

يَسْتَفْتُونَكَ ۚ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ ۚ إِنِ امْرُؤٌ هَلَكَ
لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَا إِنِ
لَمْ يَكُنْ لَهَا وَلَدٌ ۚ فَإِن كَانَتَا اثْنَتَيْنِ فَلَهُمَا الشُّلْثَانُ ۚ إِنَّمَا تَرَكَ
وَإِن كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ

يُسِئِرُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿١٧٦﴾

They seek a ruling from you. Say, "Allah gives you the ruling concerning *Kalalah*.¹ If a person dies having no son, but he does have a sister, then, she gets one half of what he leaves. And he will inherit her if she has no child. And if they are two (sisters), they get two third of what he leaves. And if they are brothers and sisters, both male and female, then, the male gets a share equal to that of two females." Allah explains to you lest you should go astray. And Allah is fully aware of everything. [176]

A little after the beginning of Sūrah al-Nisā', there appeared some injunctions relating to inheritance. Then, after a considerable gap, the text returned to the injunction of inheritance alongwith others. Now, at the end of the Sūrah, the text reverts to the subject once again. Perhaps the wisdom behind this scattering of the subject at three different places could be the consideration of prevailing injustice in matters of inheritance before the advent of Islam. By taking it up in the beginning, then in the middle, and finally in the end, it was hoped that the addressees would be gradually alerted to the need of justice in this area and would thus be enabled to show their maximum concern.

Summary of the Rulings given²

The verse (176) was revealed in answer to the question posed by some Companions of the Holy Prophet صلى الله عليه وسلم regarding the inheritance of a *Kalālah*. *Kalālah* means a person who dies leaving neither children nor parents. The verse has clarified that the property left by a *Kalālah* shall be distributed in the following manner:

(1) If the *Kalālah* has left one real sister, or one half sister from father's side,³ then, after settling the preferential rights (such as debts, wills, burial expenses) she will get one half of the property. The other

1. *Kalalah*: A person who has no ascendent or descendent at the time of his death.

2. This summary is based on the خلاصه تفسیر given in the original, without translating it word-by-word. (Muhammad Taqi Usmani)

3. As for a half sister from mother's side, her share has already been mentioned in 4:12 as being one sixth if she is alone. And if there are two or more such sisters or brothers, they will share one third of the property equally. (Muhammad Taqi Usmani)

half will be given to the heirs falling in the category of 'Aṣbāt. If no heir from the category of 'Aṣbāt is alive, then this half, too, will be given back to the sister of the deceased (meaning thereby that she will secure the whole property).

(2) If the sister referred to in para (1) above dies, and leaves no children, and her brother is alive, then he will get the whole property left by her.

(3) If a *Kalālah*, male or female, dies and leaves two or more sisters, either real sisters or half-sisters from father's side then they shall get two thirds of the property left by the *Kalālah*. The remaining one third will be given to 'Aṣbāt, if any, and in the absence of 'Aṣbāt this one third will also be given to the sisters who will distribute their share among themselves equally.

(4) If a *Kalālah* leaves behind a combination of brothers and sisters (either real or from father's side only), then the whole property, after satisfying the preferential rights, shall be distributed between them on the principle that every brother will get twice the share of every sister.

Important Notes

1. The cause of revelation and the injunction of *Kalālah* described in the verse beginning with: *يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ* (They seek a ruling from you. Say, "Allah gives you the ruling concerning *kalālah*") provides us with information on certain important aspects. To be noted first is a comparison between two examples given earlier in the text. In verse 170: *وَإِنْ تَكْفُرُوا فَإِنَّ لِلّٰهِ مَا فِي السَّمٰوٰتِ وَمَا فِي الْاَرْضِ* (And if you disbelieve, then, to Allah belongs what is in the heavens and the earth), there was the condition of disbelievers. Then came a similar statement in Verse 174: *فَاَمَّا الَّذِيْنَ اٰمَنُوْا بِاللّٰهِ وَاعْتَصَمُوْا بِهٖ الْغ* (Now those who believe in Allah and hold on to Him) which presented the model of the noble Companions of the Holy Prophet ﷺ. These two parallel but divergent states of the believers and the disbelievers were brought into focus so that people can fully understand how astray and evil were those who turned away from the revelation (*waḥy*) and how true and virtuous were those who followed it.

2. Subsequent to observations made above, it also becomes obvious

that the People of the Book did something terrible when they made the abomination of suggesting a partner and son in the purest conceivable divinity of Almighty Allah an article of their faith. They also went as far as taking a blatant position against the Divine revelation.

Quite contrary to this is the life style of the noble Companions of the Messenger of Allah, may the blessing of Allah and peace be upon him. Not to say much about their consistent concern for the fundamentals of Faith and the most devoted performance of acts of worship, they would be equally inquisitive and eager to find out their obligations in matters subsidiary and commonplace such as those of inheritance and marriage. They would wait for *Wahy*, the command of Allah through revelation and they would look for guidance from the Holy Prophet ﷺ in everything they did. Though, it is easier to do your own bidding under the dictate of reason or desire, yet they did not elect to be ruled by their personal desire or reason. If they did not understand something at a given time, they would return to the Prophet صلى الله عليه وسلم to recheck until they were satisfied. Here are two sets of people, so different and so apart!

3. This also tells us that our noble Prophet صلى الله عليه وسلم would not give a decision on his own without the guiding command of *Wahy* (revelation). If there was no standing guidance revealed through *Wahy* present in a certain case, he would put his decision on hold and wait for the coming of *Wahy*. When it did, he gave his verdict. In addition to that, there is a subtle hint here in the direction of the wisdom behind the gradual revelation of the Qur'ān. If the whole Book was revealed all at one fixed time as demanded by the People of the Book, it would have not carried the same benefits as there are in the fact that the Qur'ān was revealed as needed and when appropriate, all functionally spaced out. This modality accommodated the requirements of addressees who could ask a question out of some necessity and be answered through the recited revelation (*al-Wahy al-Matluww*). An example of this methodology appears right here in the present verse while others appear at several other occasions in the Qur'ān. No doubt, this form is far beneficial, but the core of its distinction lies elsewhere. That is because of the most refined sublimity of men and women of faith who turn to Allah in remembrance and are honoured by being

addressed by their most exalted Creator. This is indeed a great honour never granted to any other community. Certainly no grace is greater than the grace granted by Allah, the ultimate dispenser. Now, any verse of the Qur'ān which was revealed in the favour of or in answer to the question of a particular Companion is treasured as a testament of his virtues. And a *Waḥy* which came favouring the position taken by one of them on the occasion of some matter causing difference of opinion, is sufficient to keep the name and merit of that Companion alive right upto the Day of Doom.

Thus, by referring to the question and answer regarding *Kalālah*, hint has been given towards similar questions and answers elsewhere.

(Exegetical notes, Tafsīr 'Usmānī
by Maulanā Shabbīr Aḥmad 'Usmānī)

Praised be Allah. Sūrah al-Nisā' ends here

وَلِلّٰهِ الْحَمْدُ اَوَّلُهُ وَاٰخِرُهُ

MA'ARIFUL-QUR'AN

The End of Volume Two